PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Jennifer Pearson et al.	Examiner: Maikhanh Nguyen
Serial No.: 09/589,585	Group Art Unit: 2176
Filed: June 07, 2000	Docket: 2043.025US1

For: DYNAMIC SELECTION OF IMAGES FOR WEB PAGES

APPEAL BRIEF UNDER 37 CFR § 41.37

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Commissioner for Patents
P.O. Box 1450
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Sir:

The Appeal Brief is presented in support of the Notice of Appeal to the Board of Patent Appeals and Interferences, filed on April 3, 2009, from the Final Rejection of claims 13-15, 19-24, and 26-29 of the above-identified application, as set forth in the Final Office Action (*Office Action*) mailed on February 12, 2009.

The Commissioner of Patents and Trademarks is hereby authorized to charge Deposit Account No. 19-0743 in the amount of $540.00 which represents the requisite fee set forth in 37 C.F.R. § 41.20(b)(2). Appellants respectfully request consideration and reversal of the Examiner's rejections of pending claims.

APPEAL BRIEF UNDER 37 C.F.R. § 41.37

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1. REAL PARTY IN INTEREST

The real party in interest of the above-captioned patent application is the assignee, EBAY INC. as evidenced by the Assignment from the Inventors recorded on June 7, 2000 at Reel 010858, Frames 0759-0762.

2. RELATED APPEALS AND INTERFERENCES

There are no other appeals or interferences known to Appellants that will have a bearing on the Board's decision in the present appeal.

3. STATUS OF THE CLAIMS

The present application was filed on June 7, 2000 with claims 1-24. In response to the Restriction Requirement mailed November 25, 2003, Appellants canceled claims 16-18. In response to the Non-Final Office Action mailed January 12, 2005, Appellants added claims 25-26. In response to the Non-Final Office Action mailed January 11, 2008, Appellants cancelled claims 1-12 and 25. In response to the Non-Compliant Amendment mailed July 30, 2008, Appellants added claims 27-29. Claims 13-15, 19-24, and 26-29 stand twice rejected, remain pending, and are the subject of the present Appeal.

4. STATUS OF AMENDMENTS

Claim 19 was amended subsequent to the Final Office Action dated January 6, 2009. The March 26, 2009 Advisory Action indicates the amendment was entered.

5. SUMMARY OF CLAIMED SUBJECT MATTER

This summary is presented in compliance with the requirements of Title 37 C.F.R. §41.37(c)(I)(v), mandating a "concise explanation of the subject matter defined in each of the independent claims involved in the appeal." Nothing contained in this summary is intended to change the specific language of the claims described, nor is the language of this summary to be construed to limit the scope of the claims in any way.

Specific paragraph and line numbers are merely exemplary and are given below merely as an aid in understanding various inventive subject matters presented. The paragraph and line numbers relate to the as-filed application.

INDEPENDENT CLAIM 13

Aspects of the present inventive subject matter include, but are not limited to, a computer-readable medium having stored instructions to select images for a markup language document, the images being selected based at least partially on a set of random numbers.

13. A computer-readable medium (*Fig. 5, element 524 and pg. 14, lines 12-14.*) having stored thereon executable instructions (*Fig. 5, element 526 and pg. 14, lines 13-14.*) for causing a computer (*Fig. 5, element 500 and pg. 14, lines 4-10, et seq.*) to perform a utility program (*Fig. 2, element 20, pg. 7, lines 15-16, and pg. 11, lines 1-2.*) for selecting images (*Pg. 16, lines 1-3.*) for a markup language document (*Fig. 2, element 205 and pg. 7, lines 15-16, Fig. 3A, element 309, pg. 11. lines 9-10, and pg. 16, lines 18-20.*) comprising:

determining a number of images to display (*Fig. 3A, element 301 and pg. 11, lines 2-3.*) in the markup language document (*Fig. 3A, element 309, pg. 11, lines 9-10, and pg. 16, lines 18-20.*);

obtaining a set of random numbers, the set of random numbers containing a plurality of random numbers (*Fig. 3A, element 303 and pg. 11, lines 4-5.*), a number of the plurality of

random numbers being equal to the determined number of images (*Fig. 3A, element 305 and pg. pg. 11, lines 6-7.*);

retrieving images from a group of images using the set of random numbers (*Fig. 3A, element 305 and pg. pg. 11, lines 6-7.*), each retrieved image being associated with an item represented in that retrieved image (*Pg. 7, line 20 to pg. 8, line 3.*); and

placing the retrieved images in the markup language document (*Fig. 2, element 205 and pg. 7, lines 15-16, Fig. 3A, element 309, pg. 11. lines 9-10, and pg. 16, lines 18-20.*).

INDEPENDENT CLAIM 19

Aspects of the present inventive subject matter include, but are not limited to, a computer system having a computer-readable medium having stored instructions to select images for a markup language document, the images being selected based at least partially on a set of random numbers.

19. A computer system (*Fig. 5, element 500 and pg. 14, lines 4-10, et seq.*) comprising:

a processing unit (*Fig. 5, element 502 and pg. 14, line 4.*);

a memory (*Fig. 5, elements 504, 506, and pg. 14, line 5.*) coupled to the processing unit through a system bus (*Fig. 5, element 508 and pg. 14, line 5.*);

a computer-readable medium (*Fig. 5, element 524 and pg. 14, lines 12-14.*) coupled to the processing unit through the system bus, and an instruction (*Fig. 5, element 526 and pg. 14, lines 13-14.*) embedded in a markup language document (*Fig. 2, element 205 and pg. 7, lines 15-16, Fig. 3A, element 309, pg. 11. lines 9-10, and pg. 16, lines 18-20.*) in the memory to cause the processing unit to execute a utility program (*Fig. 2, element 20, pg. 7, lines 15-16, and pg. 11, lines 1-2.*) from the computer-readable medium, wherein the utility program causes the processing unit to determine a number of images to display (*Fig. 3A, element 301 and pg. 11, lines 2-3.*) in the markup language document, select the number of images using a set of random numbers (*Fig. 3A, element 305 and pg. pg. 11, lines 6-7.*), a number of the set of random numbers being equal to the determined number of images (*Fig. 3A, element 305 and pg. pg. 11, lines 6-7.*), and place the selected images in the markup language document (*Fig. 2, element 205 and pg. 7, lines 15-16, Fig. 3A,*

element 309, pg. 11. lines 9-10, and pg. 16, lines 18-20.), each selected image being associated with an item represented in that selected image (*Pg. 7, line 20 to pg. 8, line 3.*).

INDEPENDENT CLAIM 26

Aspects of the present inventive subject matter include, but are not limited to, a system to select images for a markup language document, the images being selected based at least partially on a set of random numbers.

26. A system for selecting images (*Pg. 16, lines 1-3 and Fig. 5, element 500 and pg. 14, lines 4-10, et seq.*) for a markup language document (*Fig. 2, element 205 and pg. 7, lines 15-16, Fig. 3A, element 309, pg. 11. lines 9-10, and pg. 16, lines 18-20.*), the system comprising:

means for determining a number of images to display (*Fig. 5, element 502 and pg. 14, line 4; Fig. 3A, element 301 and pg. 11, lines 2-3.*) in the markup language document;

means for obtaining a set of random numbers, the set of random numbers containing a plurality of random numbers (*Fig. 5, element 502 and pg. 14, line 4; Fig. 3A, element 303 and pg. 11, lines 4-5.*), a number of the plurality of random numbers being equal to the determined number of images (*Fig. 3A, element 305 and pg. pg. 11, lines 6-7.*);

means for retrieving images from a group of images using the set of random numbers (*Fig. 2A, element 203 and pg. 8, lines 8-9; Fig. 5, element 502 and pg. 14, line 4; Fig. 3A, element 305 and pg. pg. 11, lines 6-7.*), each retrieved image being associated with an item represented in that retrieved image (*Pg. 7, line 20 to pg. 8, line 3.*); and

means for placing retrieved images in the markup language document (*Fig. 2A, element 203 and pg. 7, lines 18-19; Fig. 2, element 205 and pg. 7, lines 15-16, Fig. 3A, element 309, pg. 11. lines 9-10, and pg. 16, lines 18-20.*).

INDEPENDENT CLAIM 27

Aspects of the present inventive subject matter include, but are not limited to, a method to select images for a markup language document, the images being selected based at least partially on a set of random numbers.

27. A method for selecting images (*Pg. 16, lines 1-3.*) for a markup language document (*Fig. 2, element 205 and pg. 7, lines 15-16, Fig. 3A, element 309, pg. 11. lines 9-10, and pg. 16, lines 18-20.*), the method comprising:

determining a number of images to display (*Fig. 3A, element 301 and pg. 11, lines 2-3.*) in the markup language document;

obtaining a set of random numbers, the set of random numbers containing a plurality of random numbers (*Fig. 3A, element 303 and pg. 11, lines 4-5.*), a number of the plurality of random numbers being equal to the determined number of images (*Fig. 3A, element 305 and pg. pg. 11, lines 6-7.*);

retrieving images from a group of images using the set of random numbers (*Fig. 3A, element 305 and pg. pg. 11, lines 6-7.*), each retrieved image being associated with an item represented in that retrieved image (*Pg. 7, line 20 to pg. 8, line 3.*); and

placing the retrieved images in the markup language document (*Fig. 2, element 205 and pg. 7, lines 15-16, Fig. 3A, element 309, pg. 11. lines 9-10, and pg. 16, lines 18-20.*).

This summary does not provide an exhaustive or exclusive view of the present subject matter, and Appellants refer to each of the appended claims and its legal equivalents for a complete statement of the invention.

6. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Rejection of the Claims under 35 U.S.C. §101

On page 2, paragraph 2 of the *Office Action*, the Examiner rejected claims 27-29 under 35 U.S.C. §101 as being directed to non-statutory subject matter.

Rejection of the Claims under 35 U.S.C. §103(a)

On page 3, paragraph 3 of the *Office Action*, the Examiner rejected claims 13-15, 19-24, and 26-29 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 7,007,076 to Hess et al. (*Hess*) in view of "JavaScript Handout 2" (*JavaScript*).

7. ARGUMENT

A) The Applicable Law under 35 U.S.C. §101

The United States Court of Appeals for the Federal Circuit (CAFC) recently held that the machine-or-transformation test is the sole criterion for patent eligibility under § 101. The CAFC additionally stated that,

> The Supreme Court, however, has enunciated a definitive test to determine whether a process claim is tailored narrowly enough to encompass only a particular application of a fundamental principle rather than to pre-empt the principle itself. ***A claimed process is surely patent-eligible under § 101 if: (1) it is tied to a particular machine or apparatus, or (2) it transforms a particular article into a different state or thing***. (*In re Bilski*, 545 F.3d 943, 954). Emphasis added.)

With regard to the second prong of the Bilski test, the *Bilski* court clarified how the transformation prong can be applied. The CAFC cited to the *Abele* court[1] approvingly when it stated,

> We further note for clarity that ***the electronic transformation of the data itself into a visual depiction in Abele was sufficient; the claim was not required to involve any transformation of the underlying physical object that the data represented. We believe this is faithful to the concern the Supreme Court*** articulated as the basis for the machine-or-transformation test, namely the prevention of pre-emption of fundamental principles. (*Bilski* at 963. Emphasis added.)

[1] *In re Abele*, 684 F.2d 902 (CCPA 1982).

B) The Applicable Law under 35 U.S.C. §103(a)

The Examiner has the burden under 35 U.S.C. § 103 to establish a *prima facie* case of obviousness. (*In re Fine,* 837 F.2d 1071, 1074,5 USPQ2d 1596, 1598 (Fed. Cir. 1988).) The recent U.S. Supreme Court decision of *KSR v. Teleflex* provides a tripartite test to evaluate obviousness.

> A rationale to support a conclusion that a claim would have been obvious is that all the claimed elements were known in the prior art and one skilled in the art could have combined the elements as claimed by known methods with no change in their respective functions, and the combination would have yielded nothing more than predictable results to one of ordinary skill in the art." (See KSR International Co. v. Teleflex Inc., 127 S. Ct. 1727, 82 U.S.P.Q.2d 1385 (2007)). Emphasis added.)

The *KSR* Court further held that "rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." (*See In re Kahn*, 441 F. 3d 977, 988 (CA Fed. 2006) cited with approval in *KSR Int'l v. Teleflex Inc.*, 127 S. Ct. 1727, 1740-41 (2007)).

As further discussed in *KSR*, the determination of obviousness under 35 U.S.C. § 103 is a legal conclusion based on factual evidence. (*See Princeton Biochemicals, Inc. v. Beckman Coulter, Inc.,* 7, 1336-37 (Fed. Cir. 2005).) The legal conclusion, that a claim is obvious within § 103(a), depends on at least four underlying factual issues set forth in *Graham v. John Deere Co. of Kansas City,* 383 U.S. 1, 17 (1966): (1) the scope and content of the prior art; (2) differences between the prior art and the claims at issue; (3) the level of ordinary skill in the pertinent art; and (4) evaluation of any relevant secondary considerations.

Therefore, the test for obviousness under §103 must take into consideration the invention as a whole; that is, one must consider the particular problem solved by the combination of elements that define the invention. (*Interconnect Planning Corp. v. Feil,* 774 F.2d 1132, 1143, 227 USPQ 543, 551 (Fed. Cir.1985).) The Examiner must, as one of the inquiries pertinent to any obviousness inquiry under 35 U.S.C. §103, ***recognize and consider not only the similarities***

but also the critical differences between the claimed invention and the prior art. (*In re Bond, 910* F.2d 831,834, 15 USPQ2d 1566, 1568 (Fed. Cir. 1990), *reh'g denied,* 1990 U.S. App. LEXIS 19971 (Fed. Cir.1990).) Critical differences in the prior art must be recognized (when attempting to combine references). (*In re Bond,* 910 F.2d 831,834, 15 USPQ2d 1566, 1568 (Fed. Cir. 1990), *reh'g denied,* 1990 U.S. App. LEXIS 19971 (Fed. Cir.1990).)

Moreover, the fact that a reference teaches away from a claimed invention is highly probative that the reference would not have rendered the claimed invention obvious to one of ordinary skill in the art. (*Stranco Inc. v. Atlantes Chemical Systems, Inc.,* 15 USPQ2d 1704, 1713 (Tex. 1990).) When the prior art teaches away from combining certain known elements, discovery of a successful means of combining them is more likely to be nonobvious. (*Id.* at 4 citing *United States v. Adams,* 383 U.S. 39, 51-51 (1966).)

C) Discussion of the rejection of claims 27-29 under 35 U.S.C. § 101 as being directed to non-statutory subject matter.

On page 2 of the Advisory Action, the Examiner maintained the prior rejection of claims 27-29 under 35 U.S.C. §101. On page 2, paragraph 2 of the *Office Action*, the Examiner rejected claims 27-29 as being directed to non-statutory subject matter. Specifically, the Examiner stated that,

> Claims 27-29 recite a method comprising steps that may be performed mentally and/or manually by a human being. Thus the method neither explicitly recites another statutory class of invention . . . nor inherently requires the use of a particular machine or apparatus. (Emphasis in original.)

In response, Appellants respectfully remind the Board that the proper test for patent eligibility under 35 U.S.C. §101 is the machine-or-transformation test. With regard to the second prong of the Bilski test, the *Bilski* court clarified how the transformation prong can be applied.

Independent Claim 27

Appellants' independent claim 27 recites, *inter alia*,

> [D]etermining ***a number of images to display*** in the markup language document . . .
>
> obtaining a set of random numbers, the set of random numbers containing a plurality of random numbers, ***a number of the plurality of random numbers being equal to the determined number of images***;
>
> ***retrieving images from a group of images using the set of random numbers, each retrieved image being associated with an item represented in that retrieved image***; and
>
> ***placing the retrieved images*** in the markup language document. (Emphasis added.)

Appellants have used the term "image" in the as-filed application to indicate, for example, "[e]ach thumbnail image record contains data associated with ***an auction item represented by the image***." (*Specification* at 7, line 21 to 8, line 1. Emphasis added.)

As stated above, the *Bilski* court clarified how the transformation prong can be applied. The CAFC cited to the *Abele* court[2] approvingly when it stated,

> We further note for clarity that ***the electronic transformation of the data itself into a visual depiction in Abele was sufficient; the claim was not required to involve any transformation of the underlying physical object that the data represented. We believe this is faithful to the concern the Supreme Court*** articulated as the basis for the machine-or-transformation test, namely the prevention of pre-emption of fundamental principles. (*Bilski* at 963. Emphasis added.)

Thus, the "image," found in each element of claim 27, ***is an image of an underlying physical object that the data represented, the data being transformed, thus meeting the transformation test*** as defined by *Abele*. Consequently, since the image is of an underlying physical object, and data related to that image are then transformed, the claim meets the second prong of the *Bilski* machine-or-transformation test. Therefore, claims 27 and its dependent claims 28 and 29 are directed to statutory subject matter. Appellants therefore respectfully request reversal of the rejection under 35 U.S.C. §101 with reference to claim 27 and claims 28 and 29 that depend therefrom.

[2] *In re Abele*, 684 F.2d 902 (CCPA 1982).

D) Discussion of the rejection of claim s 13-15, 19-24, and 26-29 as being unpatentable under 35 USC § 103(a) over Hess in view of JavaScript.

On page 2 of the Advisory Action, the Examiner maintained the rejections of claims 13-15, 19-24, and 26-29 under 35 U.S.C. §103. No new arguments or rebuttals were advanced in the Advisory Action that were not offered in the *Office Action.*

On page 3, paragraph 3 of the *Office Action*, the Examiner rejected claims 13-15, 19-24, and 26-29 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 7,007,076 to Hess et al. (*Hess*) in view of "JavaScript Handout 2" (*JavaScript*). Since a *prima facie* case of obviousness has not been properly established, Appellants respectfully traverse the rejection. Appellants will show that the cited references, either singly or in combination, neither teach nor suggest all limitations of Appellants' claims.

Independent Claims 13, 19, 26, and 27

Appellants' independent claim 13 recites, *inter alia*,

> ***[D]etermining a number of images to display*** in the markup language document;
>
> obtaining a set of random numbers, the set of random numbers containing a plurality of random numbers, ***a number of the plurality of random numbers being equal to the determined number of images***; [and]
>
> retrieving images from a group of images using the set of random numbers, ***each retrieved image being associated with an item represented in that retrieved image***. (Emphasis added.)

Appellants' other independent claims, 19, 26, and 27, each share similar limitations with claim 13.

The Examiner relies on *Hess*[3] to show Appellants' claimed element of "determining a number of images to display." However, in contrast to Appellants' claim, *Hess* merely discusses a means to efficiently store a large number of thumbnail images.

[3] *See Office Action* at 4.

> Importantly, as one feature of the present embodiment, ***thumbnail images are not stored as individual files; rather, they are stored in an efficient database format*** that will be described further below. . . . The practicality of storing and maintaining thousands upon thousands of individual compressed thumbnail image files is questionable at best. (*Hess* at col. 5, lines 55-63, emphasis added.)

Thus, *Hess* discusses efficiently storing a large number of thumbnail images by not storing the thumbnails as individual files. *Hess* is silent on "determining a number of images to display." Instead of determining a number of images to display, *Hess* focuses on how to harvest ***all*** images.

> [T]humb building machine 450 includes a harvesting process 455 and a database 460. As will be described further below, ***the harvesting process 455 periodically harvests images that sellers have associated with items in the listing database 420***. (*Id.* at col. 5, lines 37-41, emphasis added.)

Consequently, since *Hess* merely harvests all images, *Hess* neither teaches nor suggests Appellants' claimed element of "determining a number of images to display in the markup language document" as recited in claim 13.

The Examiner next relies on *JavaScript*[4] to show Appellants' claimed element of "a number of the plurality of random numbers being equal to the determined number of images." However, contrary to the Examiner's assertion, *JavaScript* discusses nothing more than preparing code to generate random numbers with a constraint of not having the same random number being generated twice in a row.

> That way the randomizer might hit the same value repeatedly (for instance, 5, 7, 5, 3, 5, 10, 5) ***but never twice in succession***. The simplest way to make this adjustment involves placing your randomizer within a while loop:
>
> ```
> var randyOld = 0;
> var randy = 0;
> while(randy == randyOld)
> {
> ```

[4] *See Office Action* at 5.

```
randy = Math.round {Math.random ( ) * 10};
}
randyOld = randy;
```

> ***The while statement tells the browser to execute whatever is within the curly braces {} so long as the test condition is true.*** (*JavaScript* at 2, emphasis added.)

Further, the Examiner stated that *JavaScript's* disclosure of "[g]enerating random numbers . . . pick ***any number between 1 and x*** . . . involves placing your randomizer ***within a while loop*** . . . it tells the browser to come up with new random number if the present number (randy) matches the previous number (randyOld)."[5] The Examiner stated this passage of *JavaScript* teaches the plurality of random numbers being equal to the determined number of images, as recited in the claims. Although not stated expressly, the Examiner seems to imply that "x" corresponds with the determined number of images. However, the variable "x" as defined in *JavaScript* is nothing more than a maximum value returned by the random number generator.

> [T]o generate a number at random:
>
> Math.ceil (Math.random() *x)
>
> This statement works fine if all you want to do is pick any number ***between 1 and x***, inclusive. (*JavaScript* at 2, emphasis added.)

Therefore, even if a combination of the references of *Hess* and *JavaScript* taught determining a number of images, which they do not, ***the variable "x" discussed in JavaScript is nothing more than a maximum value for the random number generator and is not related to the number of images as asserted.***

Therefore, no combination of *Hess* and *JavaScript*, singly or in combination, teach Appellants' claim element of "a number of the plurality of random numbers being equal to the determined number of images."

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[5] *Ibid.*, emphasis added.

The Examiner finally relies exclusively[6] on *JavaScript* to teach Appellants' claimed element of "retrieving images from a group of images using the set of random numbers, each retrieved image being associated with an item represented in that retrieved image." However, here again, *JavaScript* is silent on each retrieved image ***being associated with an item represented in that retrieved image***. *JavaScript* discusses pre-loading images, nothing more.

In fact, no teaching or even hint exists anywhere within *JavaScript* of each retrieved image being associated with an item. ***The Examiner's assertion that the cited reference teaches the Appellants' claimed elements is merely conclusory with no support found in JavaScript.*** "[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." (*See In re Kahn*, 441 F. 3d 977, 988 (CA Fed. 2006) cited with approval in *KSR Int'l v. Teleflex Inc.*, 127 S. Ct. 1727, 1740-41 (2007)). Although the Examiner cites to portions of the cited reference, there is no rational argument providing a legal nexus between the cited portions and Appellants' claims.

Since Appellants have shown that not all the claimed elements were known as required by *KSR*, either by *Hess* singly or in combination with *JavaScript*, claims 13, 19, 26, and 27 are patentable in view of the cited combination and should be allowed. Appellants therefore respectfully request reversal of the rejection under 35 U.S.C. §103 with regard to independent claims 13, 19, 26, and 27.

Dependent Claims 14-15, 20-24, and 28-29

Further, since claims 14-15, 20-24, and 28-29 depend, either directly or indirectly from claims 13, 19, and 27, respectively, they too are allowable for at least the same reasons as the claims from which they depend. Further, each of these dependent claims may contain additional patentable subject matter.

[6] "Hess, however, does not explicitly teach . . . 'retrieving images from a group of images using the set of random numbers, each retrieved image being associated with an item represented in that retrieved image.'" (*Ibid.*)

SUMMARY

For at least the reasons set forth above, claims 27-29 have not been properly rejected as being directed to non-statutory subject matter under 35 U.S.C. §101. Moreover, claims 13-15, 19-24, and 26-29 have not been properly rejected under 35 USC § 103(a) as being unpatentable over *Hess* in view of *JavaScript*. Therefore, Appellants respectfully request reversal of the rejections and allowance of the pending claims.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

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Date 06 June 2009 By /

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CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being filed using the USPTO's electronic filing system EFS-Web, and is addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 6th day of July 2009.

Chris Bartl
Name

/C. Bartl/
Signature

8. CLAIMS APPENDIX

13. A computer-readable medium having stored thereon executable instructions for causing a computer to perform a utility program for selecting images for a markup language document comprising:

determining a number of images to display in the markup language document;

obtaining a set of random numbers, the set of random numbers containing a plurality of random numbers, a number of the plurality of random numbers being equal to the determined number of images;

retrieving images from a group of images using the set of random numbers, each retrieved image being associated with an item represented in that retrieved image; and

placing the retrieved images in the markup language document.

14. The computer-readable medium of claim 13 having further executable instructions comprising:

validating the retrieved images against validation criteria; and

retrieving a replacement image from the group of images if a retrieved image fails the validation.

15. The computer-readable medium of claim 13 having further executable instructions comprising:

determining a location in the document for each of the retrieved images from an instruction embedded in the document.

19. A computer system comprising:

a processing unit;

a memory coupled to the processing unit through a system bus;

a computer-readable medium coupled to the processing unit through the system bus, and an instruction embedded in a markup language document in the memory to cause the processing unit to execute a utility program from the computer-readable medium, wherein the utility program causes the processing unit to determine a number of images to display in the markup language document, select the number of images using a set of random numbers, a number of the set of random numbers being equal to the determined number of images, and place the selected images in the markup language document, each selected image being associated with an item represented in that selected image.

20. The computer system of claim 19, wherein the utility program causes the processing unit to place the selected images in a location defined in the instruction.

21. The computer system of claim 19, wherein the instruction specifies the number of images to display.

22. The computer system of claim 19, wherein the computer-readable medium further comprises an administration program that causes the processing unit to create a group of images from which to select the number of images.

23. The computer system of claim 19, wherein the computer system is a web server and the markup language document is a web page.

24. The computer system of claim 23, wherein the web page contains images of items being auctioned on a web site hosted by the web server.

26. A system for selecting images for a markup language document, the system comprising:
means for determining a number of images to display in the markup language document;
means for obtaining a set of random numbers, the set of random numbers containing a plurality of random numbers, a number of the plurality of random numbers being equal to the determined number of images;
means for retrieving images from a group of images using the set of random numbers, each retrieved image being associated with an item represented in that retrieved image; and
means for placing retrieved images in the markup language document.

27. A method for selecting images for a markup language document, the method comprising:
determining a number of images to display in the markup language document;
obtaining a set of random numbers, the set of random numbers containing a plurality of random numbers, a number of the plurality of random numbers being equal to the determined number of images;
retrieving images from a group of images using the set of random numbers, each retrieved image being associated with an item represented in that retrieved image; and
placing the retrieved images in the markup language document.

28. The method of claim 27 further comprising:
validating the retrieved images against validation criteria; and
retrieving a replacement image from the group of images if a retrieved image fails the validation.

29. The method of claim 27 further comprising:
determining a location in the document for each of the retrieved images from an instruction embedded in the document.

9. EVIDENCE APPENDIX

None.

10. RELATED PROCEEDINGS APPENDIX

None.